IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/07/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.8094 OF 2003
and CRL.OP. 8095 TO 8104 OF 2003

Ramamoorthy .. Petitioner in CrlOP.8094/2003
Harikrishnan .. Petitioner in CrlOP.8095/2003
G.Padmanabhan .. Petitioner in CrlOP.8096/2003
M.Pandian .. Petitioner in CrlOP.8097/2003
V.Asokan .. Petitioner in Crlop.8098/2003
M.Vedachalam .. Petitioner in CrlOP.8099/2003
C.Murugesan .. Petitioner in CrlOP.8100/2003
M.Babu .. Petitioner in CrlOP.8101/2003
A.Venkateswarlu .. Petitioner in CrlOP.8102/2003
L.Vijayakumar .. Petitioner in CrlOP.8103/2003
Sadanantham .. Petitioner in CrlOP.8104/2003

-Vs-

State, by
The Superintendent of Police,
CBI/ACB,
Chennai. .. Respondent in all the CrlOPs.

Criminal Original Petitions filed under Section 482 of the
Code of Criminal Procedure for the reliefs as stated therein.

For petitioners : Mr.T.Sudanthiram

For respondent : Mr.A.N.Thambidurai,
Govt.Advocate(crl.side)

:COMMON ORDER

The petitioners in all the above criminal original petitions are the accused in C.C.Nos.74 of 2001 and 75 of 2001 on the file of the Court of Additional Special Judge for CBI Cases, Chennai, which are registered by the respondent on the charges of commission of offences by each of the petitioners punishable under Sections 120-B r/w.s420,467,467 r/w.471,468,468 r/w.471 and Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988. Since their applications praying to direct the respondent Police to furnish the copies of statements and documents relied on by the prosecution translated to Tamil were dismissed by the Court of Additional Special Judge for CBI Cases, Chennai, they all have come forward to file the above criminal

original petitions against the orders of the said Court dated 25.2.2003 made in Crl.M.P.Nos.11 to 21 of 2003 praying to set aside the order passed by the trial Court and direct the learned Judge of the trial Court to furnish the copies of the statements and documents translated to Tamil.

2. Regarding the status of the petitioners, they have all been employed in different capacities in the Personnel and Marketing Departments of the United India Insurance Corporation Limited in their Regional Office at Chennai.

3. Regarding their knowledge pertaining to the language, they would generally allege that they have studied up to the School final and they are conversant only with Tamil language and since they are not conversant with the English language, they have filed the petitions before the trial Court seeking a direction to the respondent to furnish them the copies of the documents and the 161 Cr.P.C. statements provided to them in Tamil version since they are unable to read, write and understand the documents and the statements in English and unable to effectively instruct their counsel, lest, serious prejudice would be caused to them in defending their case in the trial.

4. On the contrary, on the part of the respondent, they would submit that on some reason or other, the petitioners are in the habit of delaying the process of trial and this is nothing short of one such tactic adopted by the petitioners; that since being public servants, they can very well read and write English and further more, since all the accused have engaged their Lawyers, who are very conversant with the English language, it is neither necessary to supply the copies of the Tamil version of the documents to the accused nor is it incumbent on the part of the Court to indulge in such exercise of furnishing the translated version of the copies of the documents in Tamil particularly in view of the construction of Section 207 Cr.P.C., which does not at all warrant such supply of the translated version of the copies of the documents.

5. Regarding the subject in hand, two aspects have to be intensively considered, the first one is factual and the other legal. So far as the factual aspect of the subject is concerned, at the outset, it has to be assessed that for seeking such facility of supply of the translated version of the copies of documents in Tamil, whether the petitioners have factually established that they are bereft of the knowledge to read or understand the English version of the documents and the statements so as to become entitled to take up the plea that they must be supplied with the Tamil version of the copies of the documents and statements.

6. Secondly, whether there is any legal sanction in cases of such nature wherein the accused are not fettered nor incapacitated to seek recourse to have such assistance or get the translated version of the copies of the documents and statements as it is the case in preventive detention wherein the accused are in confinement, so as to demand such facilities and whether on account of the non-supply of the translated version of the documents and statements in the case in hand, any serious prejudice would be

caused to the accused?

7. During arguments, the learned counsel appearing on behalf of the petitioners would cite the unreported judgment of a learned single Judge of this Court in Crl.O.P.Nos.14620,14621 and 16888/1997, dated 8 .12.1998 and another judgment of this Court itself dated 24.1.2003 made in Crl.O.P.No.1289 of 2003. In the said order dated 24.1.2003 made in Crl.O.P.No.1289 of 2003, this Court, following the previous judgment of the learned single Judge, mentioned supra, particularly based on the judgment of the Honourable Apex Court delivered in JOLLY GEORGE VARGHESE vs. BANK OF COCHIN reported in AIR 1980 SC 470 wherein in a case of preventive detention, the Honourable Apex Court had the occasion to consider whether the provisions relating to the arrest and detention is violative of Article 11 of the International Covenant on Civil and Political Rights and Article 21 of the Constitution of India wherein the Honourable Apex Court evolving certain norms had decided that in such cases, arrest and detention cannot be held violative under the preventive detention laws and the accused would become entitled to such facilities of being supplied with copies of documents in the language known to the accused, had concluded that it was desirable to furnish the translated version of the copies of the documents to the accused and decided accordingly.

8. On the contrary, on the part of the learned Special Prosecutor, CBI cases appearing on behalf of the respondents, would argue to the effect that Section 207 Cr.P.C., which is the relevant Section concerned with the supply of the copies of the statements does not warrant the `supply of the translated version of the same' but refers to only `supply of the copies of the original documents'. The learned counsel would stress his point stating that the translated copies cannot take the place of the original documents and would urge that in the case in hand, the accused are not defending themselves but they have appointed their counsel who are conversant with the language of the documents and hence would assail the claim of the petitioners not genuine and cannot be entertained.

9. At this juncture, the learned counsel would also cite a judgment of the Divison Bench of this Court rendered in RAJENDRAN AND ANOTHER vs. STATE reported in 1992(2) Crimes 755 wherein it is held that `non-supply of the statements recorded under Section 161(3) Cr.P.C. to the accused by itself would not vitiate the trial resulting in acquittal of the case'. The learned counsel would also lay emphasis that no prejudice would be caused to the accused particularly in view of the fact that they are well conversant with the English language since almost all the correspondence, Medical Bills, Cash Bills etc. are only in English Language. The learned counsel would ultimately pose a question that if the accused is an illiterate or ill-equipped with any language, even if the documents are supplied in any language, he cannot understand anything from out of it since he cannot read or understand any language, and what will be way out for such an accused? On such arguments, the learned counsel would pray to dismiss all the above criminal original petitions as without merit.

10. Coming to the factual and legal points raised earlier, it must be admitted that these two vital aspects have not been considered by any

of the judgments cited on the part of the petitioners,much less in the judgment of this Court itself in Crl.O.P.No.1289 of 2003, dated 24.1.2003, but only appreciating the decision arrived at therein including that of the Apex Court, conclusions have been arrived at as a result of which this Court was also in its earlier judgment dated 24.1.2003 in crl.O.P.No.1289 of 2003 concluded that the supply of the translated version of the documents and statements in Tamil is a necessary.

11. But, while going into the aspect of determining the claim of the petitioners that they are not conversant with English Language in which the documents and statements are, and therefore they must be supplied the Tamil version of the same to be supplied on ground that they are unable to read, write or understand the documents and statements provided with, the petitioners would only state that they studied up to the schooling and hence they are not conversant with the language of the documents and statements as though only if they study the University courses, they could gain entry into the English language and that as though English was not taught to them in their school studies and that they have not, so far, gained any knowledge in English, which is only a hoax for the purpose of stalling the proceedings in the trial Court.

12. It is a plain fact that even in schools of Tamil Medium, English language is taught right from 5th standard till the end of the schooling as the second language which coupled with the working knowledge and experience gained in their official dealings day in and day out, would definitely facilitate the petitioners to know the English language. Further, being the public servants in Personnel and Marking Departments of the United India Insurance Company Limited, they have to deal with the correspondence in English and therefore it cannot be said that they are ignorant of English coupled with the fact that they are quite free to recourse to know the contents of the documents and the statements which are sought to be supplied in Tamil, particularly in view of the fact that all the petitioners are defended by their counsel who are well-versed in English and therefore easy conclusions could be arrived at to this question that neither the petitioners have established that they are totally ignorant of English language - which is their burden to prove since it is their plea - nor could it be concluded that the petitioners are without any facility to know the contents of the documents and the statements and therefore this point has to be decided against the petitioners and in favour of the prosecution.

13. Coming to the second legal point, in view of the answer arrived at for the first point, it is not at all necessary to answer this legal point since it has been factually concluded that the petitioners are not incapacitated from knowing the contents of the documents and the statements, since they are in English language. But, still, this Court would like to go into that aspect also since the case with which the petitioners are facing the trial is not a preventive detention case as it is held by the Supreme Court in the Jolly George Verghese case reported in AIR 1980 SC 470 wherein the accused, absolutely not having any facility to recourse to any assistance since being confined in prison, has sought for the translated version of the documents. But, it is not the case of the petitioners herein who are unfettered to seek such assistance and therefore they cannot equate themselves

with the accused of the preventive detention especially in view of the fact that the petitioners are defended by Lawyers and Section 207 Cr.P.C. also does not contemplate anything positively for such facilities to be afforded to the petitioners making the supply of the translated version of the documents and statements.

14. Yet another aspect that could also be considered is regarding Section 207 Cr.P.C. which deals with `the supply of the copies of the police report and other documents to the accused' wherein in the second proviso to Section 207(v) it is stipulated that `if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court'. Therefore, it could only be held that the prayer of the petitioners seeking the supply of the translated version of the documents and statements in Tamil is only luxurious and not a necessity in the circumstances of the case in hand and therefore in consideration of these vital aspects of the facts and law, this Court is of the firm view that the petitioners are not entitled to the relief sought for in the above criminal original petitions and therefore has to reverse its own view expressed in its judgment dated 24 .1.2003 rendered in crl.O.P.No.1289 of 2003 and hence it is held that under such circumstances mentioned supra, as they are in the case in hand, no supply of the translated version of the copies of the documents and the statements is necessary to be issued to the petitioners and what have already been supplied to them is sufficient.

In result, all the above criminal original petitions are dismissed.

Index: Yes
Internet: Yes

Rao

To

1.The Superintendent of Police,
CBI/ACB, Chennai.

2.The Additional Special Judge
for CBI Cases, Chennai.

3.Mr.A.N.Thambidurai,
Government Advocate (criminal side),
High Court, Madras.